IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

TUESDAY, THE 6TH MARCH 2007 / 15TH PHALGUNA 1928

CRL.A.No. 1553 of 2005()

SC.259/2002 of ADDL.DISTRICT & SESSIONS COURT (ADHOC), FAST TRACK COURT-I, PATHANAMTHITTA

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APPELLANT: ACCUSED

RAJAN, S/O.KRISHNAN,
CHIRAVARAMBEL VEEDU, KARUVATTA MURI,
PERINGANADU VILLAGE, ADOOR TALUK.

BY ADV. SRI.VINOY VARGHESE KALLUMOOTTILL

RESPONDENT: COMPLAINANT

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY P.P.SRI.P. RAVINDRA BABU

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 06/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. THANKAPPAN, J.

Crl.A.NO.1553 OF 2005

Dated this the 6th day of March, 2007.

JUDGMENT

The appellant faced trial for the offence punishable under Section 8(1) read with 8(2) of the Abkari Act. The prosecution allegation against the appellant is that he was found in possession of 20 packets of arrack each contained 150 ml on 31.3.1999 at a place called Mithrapuram near Udayagiri temple in Meloodu Kara without having any licence or permit under the provisions of the Abkari Act and Rules. To prove the case against the appellant, the prosecution examined Pws 1 to 5 and produced Exts.P1 to P7. The prosecution also produced MO1 series. After the closing of the prosecution evidence, the appellant was questioned under Section 313 of the Code of Criminal Procedure. Denying the allegations levelled, the appellant had stated that the case was foisted against him. The appellant was arrested from his house on 30.3.1999. To prove the above case of the appellant, he had examined one witness as DW1. However, on considering the evidence adduced by the prosecution, the

trial court found that the appellant guilty under Section 8(1) read with Section 8(2) of the Abkari Act and he was convicted thereunder and sentenced to undergo R.I for three years and to pay a fine of Rupees One lakh and in default of payment of fine, a further period of two years simple imprisonment was also ordered. Against that conviction and sentence, this appeal is filed.

2. This Court heard the learned counsel appearing for the appellant and the learned Public Prosecutor. The learned counsel appearing for the appellant submits that the trial court went wrong in placing reliance on the prosecution evidence to find the appellant guilty of the charge. The counsel also submits that the trial court ought to have considered the case of the appellant on the basis of the suggestions made to the witnesses. Pws 1, 2, 4 and 5 are the Excise Officials. PW3 is an independent witness, who was examined to prove that the appellant was arrested at the place and date as alleged by the prosecution. However, he turned hostile to the prosecution. Hence, the trial court considered the evidence of Pws 1, 2 and 4 out of whom PW1 is

the Preventive Officer, who detected the crime. He had given evidence before the court that on 31.3.1999 while himself and his companions, Excise Officials, were on patrol duty and when they reached near the house of one Narayanan Nair at Mythrapuram, near Udayagiri Temple road, they have seen that the appellant is walking towards them holding a plastic cover in his hand. This witness has further stated that on seeing the Excise Officials, the appellant tried to escape from the scene. He was waylaid and on questioning it is revealed that the plastic cover contained 20 packets of arrack each contained 150 ml. On preparing Ext.P1 mahazar, the said plastic cover was recovered and one of the packets was taken. It is revealed that the packet contained arrack and thereafter PW1 had taken sample from the packet which he had taken from the plastic cover. Further this witness has stated that he had also prepared Ext.P2 arrest memo and giving information to the wife of the appellant, appellant was arrested at the spot. This witness has also stated that the contraband article and the sample seized under Ext.P1 mahazar were produced before the court on the same day. This witness has further stated that investigation of the case

was continued by Pws 4 and 5 and finally on the basis of Ext.P7 chemical report, a charge was laid before the court against the appellant. PW2 is another Preventive Officer, who accompanied PW1 at the time of detection of the crime and this witness had given evidence in full support of PW1. He had also stated that the appellant was arrested and the contraband article was seized from the appellant and sample was taken. He justified the action followed by PW1. This witness has further stated that presence of PW3, an independent witness, was also there at the spot when PW1 detected the crime. Evidence of Pws 4 and 5 is that they had continued the investigation of the case and on the basis of Ext.P7 chemical report it is found that the sample contained arrack and finally charge has been laid before the court.

3. The trial court had found that the prosecution succeeded in proving that the appellant was arrested at the place and time as alleged by the prosecution and MO1 plastic cover was seized from the appellant and the same was also taken for analysis. On the above evidence, the trial court found the appellant guilty under Section 8(1) read with

8(2) of the Abkari Act.

4. After considering the entire prosecution evidence and the contention of the learned counsel appearing for the appellant, this Court is of the view that the findings entered by the trial court are on evidence and require no interference. With regard to the sentence, the learned counsel contended that some leniency may be shown to the appellant. Considering the entire facts proved by the prosecution, this Court is not inclined to interfere with the substantive sentence already awarded by the trial court. However, the sentence imposed on default of payment of the fine shall be reduced to six months instead of two years.

With the above modification of the sentence, in all other respects the appeal stands dismissed.

K. THANKAPPAN, JUDGE.

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